

SUPREME COURT OF INDIA

Commissioner of Income Tax, Udaipur Rajasthan

Vs.

Mcdowell & Co. Ltd.

C.A.No.3473 of 2007

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

08.05.2009

JUDGMENT

Dr. Arijit Pasayat, J.

1. Questioning correctness of the judgment rendered by a Division Bench of the Rajasthan High Court at Jodhpur, this appeal has been filed.

“The questions raised before this Court are as follows:

1. Whether the Division Bench of the High Court has not grossly erred in law in framing an additional question which was not referred in the appeal filed by the petitioner herein?”
2. Whether in the facts and circumstances of the case, the Division Bench of the High Court was not justified in law in affirming the findings of the ITAT whereby ITAT deleted the addition of Rs.6 lakhs by holding the unpaid amount of bottling fee, has on furnishing bank guarantee to be treated as actual payment and accordingly holding that the deduction in respect of the same cannot be denied under section 43B of the *IT Act, 1961*?
3. Whether the Division Bench of the High Court has not erred in law in holding that deduction of an amount of liability of the assessee to pay bottling fee under the Rajasthan Excise Act, 1950 read with Rule 69 of the Rajasthan Excise Rules was not a fee in its technical sense and was allowable as revenue expenditure as price paid to State for parting with its exclusive privilege as an incident of trading activities by the State for the assessment year in question?
4. Whether in the facts and circumstances of the case, the Division Bench of the High Court was justified in law in affirming the findings of the ITAT whereby it deleted the addition of Rs.6,69,743/- made by the Assessing Officer on account of disallowance of Research and development expenses holding that the same were not

covered under Section 35(1)(iv) of the IT Act, 1961 by wrongly relying on the decision in ITA 1546/JP/95 dated 30.3.2001?

5. Whether in the facts and circumstances of the case, the Division Bench of the High Court was justified in law in affirming the findings the ITAT allowing the depreciation on research and development assets which related to the closed business of Fast Food Division/Unit of the assessee company as such not used during the previous year?

6. Whether in the facts and circumstances of the case, the Division Bench of the High Court was justified in law in affirming the findings of the ITAT deleting the addition of Rs.6,69,743/- made by the Assessing Officer on account of disallowance of Research and development Expenses not covered under Section 35(1)(iv) of the IT Act, 1961 by wrongly relying on the decision in ITA1546/JP/95 dated 30.3.2001? 2. Before the High Court following questions were raised:

1. "Whether on the facts and, in the circumstances of the case the ITAT was justified in deleting the addition of Rs.6 lacs by holding that unpaid amount of bottling fee has, on furnishing of Bank Guarantee, to be treated as actual payment and accordingly the deduction in respect of the same can not be denied under section 438of the I.T. Act. 1961?"

2. "whether on the facts and in the circumstances of the case the ITAT was justified in allowing the depreciation on Research and Development Assets which related to the closed business of Fast Food Division/Unit of the Assessee company any as such not used during the previous year"?

3. "Whether on the facts and in. the circumstances of the case the ITAT was justified in deleting the addition of Rs.6,69,743/- made by the Assessing officer on account of Disallowance of Research and Development expenses not covered under section 35(1)(iv) of the Income Tax Act, by wrongly relying on the decision in the ITA No.1546/JP/95 dated 30.03.2001"?

4. "Whether on the facts and in the circumstances of the case the Hon'ble ITAT was justified in deleting the disallowance of Rs.15,62,580/- holding that the technical service charges (royalty] payment under consideration is allowable based on subsequent agreement dated 10.04.1992 at higher rate then that based on earlier agreement entered into in December, 1990 even though earlier agreement entered into in December, 1990 was to be effective upto 2000, and had neither been substituted nor rescinded"?

3. The dispute in essence related to the applicability of Section 43B of the *Income Tax Act, 1961* (in short the `Act') The High Court held that the said provision has no application.

4. The dispute relates to the assessment year 1993-94. In addition to the issues which are common to assessment year 1992-93 which was the subject matter in Civil Appeal No.3511 of 2007 and Civil Appeal No.2939 of 2006 relating to the assessment year 1992-93, our answers to the questions given in relation to Section 43B and depreciation on research and development machinery and replacement of transformers shall apply to the facts of the present case also. The additional issue here relates to technical service charges. According to learned counsel for the revenue, the principles of novatio are applicable here and there was no commercial expediency for entering into a fresh contract and there is no financial benefit. We find that the High Court has noted that it is not the case of the revenue that the assessee has not actually paid Rs.30 lacs to McDowell. It is pointed out that though in two years the payments made under the new agreement were more than what would have fallen due under the original agreement, but for the subsequent years' transactions, the business expediency claim of the assessee proved to be right. It has been noticed that for the assessment year 1995-96 under the old agreement, the assessee would have been required to pay Rs.45.56 lacs towards technical services charges to McDowell, and during the assessment year 1996-97 it would have been required to pay Rs.107.323 lacs as per the old agreement whereas the assessee has during these two years paid Rs.30 lacs for each year. The Tribunal and the High Court recorded a finding that the new agreement in April, 1992 was not a subterfuge or clandestine device to reduce the tax liability but was an expenditure incurred on business expediency and the decision of the parties to enter into an agreement was based on commercial consideration. The finding is essentially a finding of fact based on cogent assessment of the factual scenario. We find nothing infirm in the decision of the Tribunal and the High Court to warrant interference. The challenge of the revenue on that ground fails.

5. The appeal is disposed of accordingly.